

GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Employment Services

VINCENT C. GRAY
MAYOR



LISA M. MALLORY
DIRECTOR

COMPENSATION REVIEW BOARD

CRB No. 12-128

SELINA M. JONES,

Claimant–Respondent,

v.

HOWARD UNIVERSITY AND SEDGWICK CMS,

Employer and Carrier-Petitioners.

Appeal from a Compensation Order by
The Honorable Leslie Meek
AHD No. 12-155, OWC No. 687447

William Schladt, Esquire for the Petitioner
Allen J. Lowe, Esquire for the Respondent

Before HEATHER C. LESLIE,¹ LAWRENCE D. TARR, and MELISSA LIN JONES *Administrative Appeals Judges*.

HEATHER C. LESLIE, *Administrative Appeals Judge*, for the Compensation Review Board.

DECISION AND ORDER

OVERVIEW

This case is before the Compensation Review Board (CRB) on the request for review filed by the Employer - Petitioner (Employer) of the July 6, 2012, Compensation Order (CO) issued by an Administrative Law Judge (ALJ) in the Office of Hearings and Adjudication of the District of Columbia Department of Employment Services (DOES). In that CO, the ALJ granted the Claimant's request for temporary total disability from January 13, 2012 to May 6, 2012 and payment of causally related medical expenses. We AFFIRM.

¹Judge Heather C. Leslie is appointed by the Director of DOES as an interim Board member pursuant to DOES Administrative Policy Issuance No. 12-02 (June 20, 2012).

FACTS OF RECORD AND PROCEDURAL HISTORY

The Claimant was a nurse for the Employer. On December 21, 2011, the Claimant was attending to a patient who was laying on the floor. While attending to this patient, the Claimant alleged a man hit her, injuring her left shoulder and neck. The Claimant sought medical treatment with Dr. Terry Thompson. Dr. Thompson recommended a course of conservative treatment and kept the Claimant off of work for a time.

A Formal Hearing was held on June 5, 2012. At the Formal Hearing the Claimant requested an award of temporary total disability from January 13, 2012 to May 6, 2012, along with causally related medical expenses. The Employer presented as evidence video surveillance of the injury. A CO was issued on July 6, 2012 granting the Claimant's claim for relief. Significantly and for purposes of this appeal, the ALJ found the video surveillance to be unreliable and accorded the video little weight.

The Employer timely appealed. On appeal, the Employer argues that the CO is not supported by the substantial evidence in the record. The Employer argues that the ALJ was in error in disregarding the video surveillance and in finding the Employer had failed to rebut the presumption of compensability.

The Claimant argues that the CO is supported by the substantial evidence in the record and should be affirmed.

THE STANDARD OF REVIEW

The scope of review by the CRB is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. See District of Columbia Workers' Compensation Act of 1979, D.C. Code, as amended, §32-1501 *et seq.* (the "Act") at §32-1521.01(d) (2) (A) and *Marriott International v. DOES*, 834 A.2d 882 (D.C. 2003).

Consistent with this standard of review, the CRB must uphold a Compensation Order that is supported by substantial evidence, even if there is substantial evidence in the record to support a contrary conclusion, and even where the CRB might have reached a contrary conclusion. *Id.* at 885.

DISCUSSION AND ANALYSIS

It is well settled that the Claimant, in order to invoke the presumption of compensability that her injury comes within the act, must show some evidence of work related event, activity or requirement which has the potential of resulting in or contributing to the death or disability. *Ferreira v. DOES*, 531 A.2d 651 (D.C. 1987). Here, the ALJ found the Claimant had satisfied this threshold requirement through her testimony and documentary evidence, a finding that the Employer does not appeal.

It is also well settled that the Act's presumption of compensability operates only "in the absence of evidence to the contrary." In *Ferreira*, the District of Columbia Court of Appeals (DCCA) has held, that "[o]nce the presumption is triggered, the burden is upon the employer to bring

forth 'substantial evidence' showing that a disability did not arise out of and in the course of employment." *Ferreira, supra*, at 655; *Parodi*, 560 A.2d at 526; *Waugh v. D.C. Department of Employment Services*, 786 A.2d 595, 600 (D.C. 2001). Where the Employer has presented evidence "specific and comprehensive" on the question of causality, the presumption falls from the analysis and the conflicting evidence is weighed without regard to the presumption..² *Ferreira, supra*.

The Employer argues that the ALJ was in error in finding that the Employer failed to rebut the presumption of compensability. The Employer argues that "the Order disregards the video submitted by the Petitioners that showed the alleged assault. Even though the claimant viewed the video and agreed it depicted her on the date in question and showed the occurrence, the ALJ finds that the video is unreliable because it is 'choppy' and does not provide a 'continuous recordation' of the event." Employer's argument, unnumbered.

A review of the Compensation Order reveals that when addressing the Employer's argument, the ALJ stated,

To support its position Employer presented a surveillance video of the work incident, EE 3. Said video does show a male walk behind Claimant and raise his hand parallel to the cervical area of Claimant's back. The video does not show what the male did with his hand and does not show the male hitting Claimant. The video however, shows intermittent portions of what occurred, and does not offer a continuous recordation of the incident in question. I find EE 3 to be unreliable and accord it little weight. Employer's evidence does not rebut Claimant's presumption that her claim for workers' compensation benefits comes within the provisions of the Act.

CO at 4.

Contrary to the Employer's first assertion that the ALJ disregarded the video, it is clear by the above summary the ALJ did review the video. Indeed, the Employer later acknowledges that the ALJ did review the video, quoting the ALJ's description of the video. The ALJ found the video to show only portions of what occurred and found it to be unreliable. We find no error in this. As this was the only evidence presented by the Employer, and having been discounted by the ALJ, the conclusion that the Employer failed to rebut the presumption of compensability is in accordance with the law.

What the Employer is in essence asking us to do is to re-weigh the evidence in favor of the Employer, finding that the video was reliable, and thus finding that the Employer rebutted the presumption. This we cannot do. The CO's finding that the Employer had not rebutted the presumption of compensability is supported by the substantial evidence in the record.

² For instance, the DCCA has held that an employer has met its burden to rebut the presumption of causation when it has proffered a qualified independent medical expert who, having examined the employee and reviewed the employee's medical records, renders an unambiguous opinion that the work injury did not contribute to the disability. *Washington Post v. D.C. DOES*, 852 A.2d 909 (D.C. 2004) (*Reynolds*).

CONCLUSION AND ORDER

The findings of fact and conclusions of law contained in the July 6, 2012 Compensation Order is supported by substantial evidence in the record. It is **AFFIRMED**.

FOR THE COMPENSATION REVIEW BOARD:

HEATHER C. LESLIE
Administrative Appeals Judge

September 14, 2012
DATE